

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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| LEMUEL R. BELL, Petitioner, vs. STATE OF SOUTH DAKOTA, Respondent. | 4:24-CV-04162-CBK ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY |
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Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Upon initial consideration of the petition, I dismissed the petition without prejudice for failure to exhaust state court habeas remedies. Petitioner filed a notice of appeal.

Pursuant to 28 U.S.C. § 2253(c)(1), an appeal from an order dismissing a petition for a writ of habeas corpus may not be taken unless a judge issues a certificate of appealability. The notice of appeal is construed as a request for a certificate of appealability. Porchia v. Norris, 251 F.3d 1196, 1197 (8th Cir. 2001).

A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right.

When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. This construction gives meaning to Congress' requirement that a prisoner demonstrate substantial underlying constitutional claims and is in conformity with the meaning of the "substantial showing" standard . . . Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted.

Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 1604, 146 L.Ed.2d 542 (2000) (emphasis supplied). Petitioner did not and has not made a substantial showing that jurists of reason would find it debatable whether the petition was correctly dismissed.

Now, therefore,

IT IS ORDERED:

1. Petitioner's motion, Doc. 9, for a certificate of appealability is denied.
2. Petitioner's motion, Doc. 12, to appeal without the prepayment of fees is denied.

TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT:

IT IS HEREBY CERTIFIED that there does not exist probable cause of an appealable issue with respect to the Court's order denying petitioner's petition for a writ of habeas corpus.

DATED this 25th day of September, 2024.

BY THE COURT:


CHARLES B. KORNMAN
United States District Judge